REMARKS

Application Amendments

Claims 1-10 are pending in this application and all presently stand rejected. By the amendments presented, the specification has been amended to correct terms which were misspelled. Claims 1 and 10 were previously amended in a Preliminary Amendment filed January 22, 2001. An objection was raised as the present application does not contain an abstract of the disclosure as required by 37 CFR 1.72 (b). An abstract on a separate sheet has been submitted. No new matter has been added.

Double Patenting Rejection

Claims 1-10 have been provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over Claims 1-10 of co-pending application No. 09/744,271 in view of Karlen et al (U.S. Patent 6,004,545). In setting forth this rejection, the Examiner indicated that a timely filed Terminal Disclaimer over these common owned applications would overcome the rejection.

Responsive to this rejection, a Terminal Disclosure under 37 C.F.R. 1.321(c) for the above-entitled application which specifies that the Petitioner disclaims the terminal part of the statutory term of any patent granted on the above entitled application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §154 to §156 and §173 as shortened by any terminal disclaimer filed prior to the grant of any patent granted on pending Application Number 09/744,271, will be immediately submitted upon receipt of the Recordation of the present application. Upon the submission of the Terminal Disclaimer, Applicant will thus obviate the provisional obviousness-type double patenting.

Statutory Type (35 U.S.C. 101) Double Patenting

The Examiner has asserted that Claim 2 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of Claim 5 of co-pending Application No. 09/744,271. Accordingly, Applicants have amended Claim 5 of the co-pending Application No. 09/744,271 in order to obviate the statutory type 35 U.S.C. 101 Double Patenting rejection.

Invention Synopsis

The present invention is directed to a hair conditioning composition for leave-on use on the hair comprising: (1) a carboxylic acid/carboxylate copolymer; (2) a visible particle; and (3) an aqueous carrier. The compositions of the present invention provides favorable aesthetic benefits, and leave the hair and hands with a clean feeling.

Art Rejections

(A) **35 U.S.C. § 102(b)**

Claims 1, 3, 4 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kang et al (WO 97/23194).

Kang et al relates to shampoo-conditioning compositions. Kang et al discloses in Example 1 a shampoo composition comprising Unishpere, dimethicone and some polymers such as PVM/MA Decadiene Crosspolymer. Kang et al also discloses shampoo compositions containing Carbomer in comparative examples. However, Kang et al does not disclose nor suggest a leave-on hair conditioning composition of the present invention,

as now amended. Further, none of the polymers disclosed in Kang et al is a carboxylic acid/carboxylate copolymers as required in the present invention. Carbomer as disclosed in Kang et al is a homopolymer of acrylic acid crosslinked with an allyl ether of pentaerythritol, an allyl ether of sucrose, or allyl ether of propylene. Kang et al does not disclose or suggest the use of a carboxylic acid/carboxylate copolymer. The benefit of the present invention is due to this carboxylic acid/carboxylate copolymer which, together with other required elements, provides favorable aesthetic benefits, conditioning benefits such as smoothness and softness, and leaves the hair and hands with clean feeling when the composition of the present invention is intended for use as leave-on products. However, Kang et al does not disclose or suggest the benefit of the present invention such as leaving the hair and hands with clean feeling when the composition of the present invention is intended for use as leave-on products, nor the relationship between the benefit and the use of carboxylic acid/carboxylate copolymer. Thus, Kang et al provides no motivation to select some components included in shampoo-conditioning compositions for providing a leave-on hair conditioning composition of the present invention, nor to use a carboxylic acid/carboxylate copolymer in the composition. Accordingly, it would also not be obvious to those of skill in the art to provide a hair conditioning composition of the present invention, by the disclosure of Kang et al.

Applicant recognizes the Examiner's citation that Kang et al discloses Carbopol-1342 on page 13, lines 5-6. However, Applicant believes that, as stated on page 13, lines 1-2, that the Carbopol 1342 is simply being used as a component of a control shampoo composition, as shown in Comparative Examples 1 to 4 (i.e. Carbomer), and used for stability testing. As disclosed on page 14, lines 25-33, Kang et al teaches that the comparative examples, which use the Carbopol 1342, are less stable when compared to the Kang et al examples using the PVM/MA Decadiene Crosspolymer. Therefore, Kang et al is further teaching away from the use of the Carbopol 1342 due the use of it resulting in less stability.

(B) **35 U.S.C. § 103(a)**

Claims 1-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kang et al (WO 97/23194) in view of Karlen et al (US Patent No. 6,004,545), Hitchen (US Patent No. 6,106,816), and Rath et al (US Patent No. 5,993,792).

The Examiner has asserted that while Kang et al. teaches shampoo compositions comprising copolymers of carboxylic acid such as Carbopol 1342, an aqueous carrier, visible particles, a humectant, viscosity modifiers and silicon compounds, Kang et al does not teach an amphoteric conditioning polymer, UV absorber, optical brightener, herbal extract, or additional conditioning agent. The Examiner asserts that it would have been

obvious to a person of skill in the art to add Merquat Plus 3300 to the composition of Kang et al. to achieve the beneficial effect of an amphoteric conditioner in view of Karlan et al and to further add Merquat 100 to the composition of Kang et al to achieve the further beneficial effect of an additional conditioning agent.

Kang et al relates to shampoo-conditioning compositions. Kang et al discloses in Example 1 a shampoo composition comprising Unishpere, dimethicone and some polymers such as PVM/MA Decadiene Crosspolymer. Kang et al also discloses shampoo compositions containing Carbomer in comparative examples. However, Kang et al does not disclose nor suggest a leave-on hair conditioning composition of the present invention, as now amended. Further, none of the polymers discloses in Kang et al is a carboxylic acid/carboxylate copolymers as required in the present invention. Carbomer as disclosed in Kang et al is a homopoymer of acrylic acid crosslinked with an allyl ether of pentaerythritol, an allyl ether of sucrose, or allyl ether of propylene. Kang et al does not disclose or suggest the use of a carboxylic acid/carboxylate copolymer. The benefit of the present invention is due to this carboxylic acid/carboxylate copolymer which, together with other required elements, provides favorable aesthetic benefits, conditioning benefits such as smoothness and softness, and leaves the hair and hands with clean feeling when the composition of the present invention is intended for use as leave-on products. However, Kang et al does not disclose or suggest the benefit of the present invention such as leaving the hair and hands with clean feeling when the composition of the present invention is intended for use as leave-on products, nor the relationship between the benefit and the use of carboxylic acid/carboxylate copoymer. Thus, Kang et al provides no motivation to select some components included in shampoo-conditioning compositions for providing a leave-on hair conditioning composition of the present invention, nor to use a carboxylic acid/carboxylate copolymer in the composition. According, it would not be obvious to those of skill in the art to provide a hair conditioning composition of the present invention, by the disclosure of Kang et al.

Applicant recognizes the Examiner's citation that Kang et al discloses Carbopol 1342 on page 13, line 5. However, Applicant believes that as stated on page 13, lines 1-2, that the Carbopol-1342 was simply being used as a component of a control shampoo composition, as shown in Comparative Examples 1 to 4, used for stability testing. As disclosed on page 14, lines 25-33, Kang et al teaches that the comparative examples, which use the Carbopol 1342, are less stable when compared to the Kang et al examples using the PVM/MA Decadiene Crosspolymer. Therefore, Kang et al is further teaching away from the use of the Carbopol 1342, due to decreased stability. Clearly, one of skill in the art would not be led to present invention, by the teachings of Kang et al in combination with the other cited references.

Therefore, Applicants have established that Kang et al neither discloses nor makes obvious the present invention. In view of this, it would not have been obvious to a person of skill in the art to combine the teachings of Kang et al regarding addition of amphoteric conditioners and additional conditioning agents and arrive at the present invention. As stated above, none of the polymers disclosed in Kang et al is a carboxylic acid/carboxylate copolymer as required in the present invention. Therefore, combining the composition as taught by Kang et al with the amphoteric conditioner of Karlen et al, or the general and broad teaching in Hitchen disclosing the use of cationic polymeric conditioning agents in shampoo compositions and the further general teaching in Rath et al of the use of optical brighteners, herbal extracts and UV absorbers, would not led one of skill in the art to the leave-in conditioners of the present invention. The benefit of the present invention is due to this carboxylic acid/carboxylate copolymer which, together with other required elements, provides favorable aesthetic benefits, conditioning benefits such as smoothness and softness, and leaves the hair and hands with clean feeling when the composition of the present invention is intended for use as leave-on products. Further, Kang et al teaches away from the present invention, and would not lead one of skill in the art to combine the teachings found in Kang et al with that of Karlen et al, Hitchen et al or Rath et al.

Applicants respectfully submit that Kang et al. does not meet the limitations set forth in the present invention and further would not render the present invention as obvious when combined with the teachings of Karlen et al, Hitchen and Rath et al. In particular, none of the polymers disclosed in Kang et al is a carboxylic acid/carboxylate copolymer as required in the present invention. In contrast, Kang et al discloses a carbomer which is a homopolymer of acrylic acid crosslinked with an allyl ether of pentaerythritol, an allyl ether of sucrose, or allyl ether of propylene.

Therefore, one of ordinary skill in the art would not have been lead to modify the compositions of Kang et al by adding or combining the "further comprising" ingredients as disclosed in Karlen et al, Hitchen and Rath et al.

Further, Kang et al actually teaches away from the present invention by demonstration the instability of compositions comprising Carbopol 1342. Therefore, one of skill in the art would not be lead by the teaching of Kang et al to combine the teachings of Karlan et al, Hitchen, or Rath et al because one would not have a reasonable expectation to succeed in achieving or improving the properties of the composition.

No Prima Facie Case

Applicant respectfully traverses this obvious rejection as Kang et al in view of Karlen et al, Hitchen, and Rath et al does not establish a prima facie case of obviousness because they do not teach or suggest all of the Applicant's claim limitations. None of the of

the polymers disclosed in Kang et al is a carboxylic acid/carboxylate copolymers as required in the present invention. Carbomer as disclosed in Kang et al is a homopoymer of acrylic acid crosslinked with an allyl ether of pentaerythritol, an allyl ether of sucrose, or allyl ether of propylene. Therefore, one of ordinary skill in the art would not have been lead to modify the compositions of Kang et al by adding or combining amphoteric conditioners or additional conditioning agents as taught by Karlen et al. Therefore, there is no prima face case of obviousness since none of the references, either alone or when combined, teach or suggest all of the Applicant's claim limitations with regard to the claimed requirements.

In light of the arguments presented herein, it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

Conclusions

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the July 2, 2001 Office Action. WHEREFORE, consideration of this application, withdrawal of the rejections under 35 U.S.C § 102 and 103(a), and allowance of Claims 1-10 are respectfully requested.

Respectfully submitted,

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May 14, 2003

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,269	01/22/2001	Takashi Sako	AA335/VB	5067

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EXAMINER	
NGUYEN, HELEN	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 09/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment	Application No.	Applicant(s)	
	09/744,269	SAKO ET AL.	
	Examiner	Art Unit	
	Helen Nguyen	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on *02 July 2001*.
   (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
   (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
   (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
   (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
   (d) ☒ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
   (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
   (b) ☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
   The issue fee required by 37 CFR 1.18 is $_____. The publication fee, if required by 37 CFR 1.18(d), is $_____.
   (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
   (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
   (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Interview Summary	Application No.	Applicant(s)	
	09/744,269	SAKO ET AL.	
	Examiner	Art Unit	
	Helen Nguyen	1617	

All participants (applicant, applicant's representative, PTO personnel):

(1) *Helen Nguyen*. (3)_____.

(2) *Attorney Linda Sivik*. (4)_____.

Date of Interview: *17 May 2002* .

Type: a)☒ Telephonic b)☐ Video Conference
c)☐ Personal [copy given to: 1)☐ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☒ No.
If Yes, brief description: _____ .

Claim(s) discussed: *N/A* .

Identification of prior art discussed: *N/A* .

Agreement with respect to the claims f)☐ was reached. g)☐ was not reached. h)☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *On May 16, 2002, the Examiner called Attorney Linda Sivik to inquire as to whether a response was made to the Non-final rejection of July 2, 2001. Accordingly, Applicants have not filed any response. Therefore, this case is now abandoned* .

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i)☒ It is not necessary for applicant to provide a separate record of the substance of the interview(if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)
In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:
1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.